

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Steve Pakola et al.	Confirmation No.:	3082
Application No.:	10/729,475	Art Unit:	1651
Filed:	December 5, 2003	Examiner:	T. Kim
Title:	PHARMACOLOGICAL VITREOLYSIS		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**SUPPLEMENTAL APPLICATION FOR PATENT TERM ADJUSTMENT AND REQUEST
FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER
37 C.F.R. § 1.705(d)**

Dear Sir:

This Supplemental Application for Patent Term Adjustment (“PTA”) and Request for Reconsideration of the PTA is supplemental to the Application and Request filed June 19, 2009, which contained an error. Applicants respectfully request withdrawal of the former Application and Request and consideration of this Supplemental Application and Request.

The Issue Notification mailed on May 27, 2009, for the above-referenced application recites 0 days of PTA. Applicants believe that the application is entitled to more than 0 days of PTA, and hereby request reconsideration of the PTA as follows.

Applicants believe the total PTA under 37 C.F.R. §§ 1.702-1.704 should be the total of:

(1) **184** days under 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1) for the 184 day Patent Office delay in issuing a first office action after February 5, 2005 (14 months from the filing date) until August 8, 2005 (date the first office action was mailed); **and**

(2) 7 days under 37 C.F.R. §§ 1.702(a)(4) and 1.703(a)(6) for the 7 day Patent Office delay in issuing the patent after June 9, 2009 (4 months from the date the issue fee was paid) until June 16, 2009; and

(3) 436 days under 37 C.F.R. §§ 1.702(b) and 1.703(b) for the Patent Office delay in issuing the patent after December 5, 2006 (three years from the filing date) until February 14, 2008 (the date Applicants filed a Request for Continued Examination under 35 U.S.C. § 132(b));

(4) less 443 days under 37 C.F.R. § 1.704.

The periods (1), (2), and (3) are believed not to overlap under 37 C.F.R. § 1.703(f). *See Wyeth v. Dudas*, 88 U.S.P.Q.2d 1538 (D.D.C. 2008). Thus, the total adjustment based on (1), (2), and (3) above would be 627 days, less 443 days (based on (4) above), would yield a total PTA of 184 days.

The additional days of patent term adjustment are requested under 37 C.F.R. §§ 1.702(b) and 1.703(b) for the following reason.

37 C.F.R. 1.702(b) states:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b)...

37 C.F.R. § 1.703(b) states in pertinent part:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) ... and

ending on the date a patent was issued, but not including the sum of the following periods:

(1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued...

The instant application was filed under 35 U.S.C. § 111(a) on December 5, 2003, and therefore should have issued by December 5, 2006. Thus, the relevant period of delay in issuing the patent began on December 6, 2006. Applicants filed a Request for Continued Examination under 35 U.S.C. § 132(b) on February 14, 2008. Accordingly, the period of adjustment under 37 C.F.R. § 1.703(b) is the period between December 6, 2006, and February 14, 2008, which is 436 days.

The instant application was never involved in an interference or maintained in a sealed condition under 35 U.S.C. § 181. Applicants did not file a Notice of Appeal to the Board of Patent Appeals and Interferences under 35 U.S.C. § 134 and 37 C.F.R. § 41.31 for the instant application. The instant application is not subject to a terminal disclaimer.

The reduction of PTA under 37 C.F.R. § 1.704 includes (1) Applicants' filing replies to Office Actions and Notices, in excess of three months from the mailing dates of the Office Actions and Notices, on January 14, 2005, February 10, 2006, October 19, 2006, July 30, 2007, February 14, 2008, and September 26, 2008 (30 days, 94 days, 94 days, 5 days, 29 days, and 92 days, respectively); (2) Applicants' filing a Supplemental Response on March 30, 2007 (57 days); and (3) Applicants' filing an Information Disclosure Statement on November 7, 2008 (42 days). Thus, the total reduction of PTA is 443 days under 37 C.F.R. § 1.704.

Further, Applicants reviewed the PTA calculation on PAIR and disagree with the 120 days of Applicant delay assessed after Applicants paid the issue fee on February 9, 2009. According to PAIR, the Applicant was assessed a delay for "Drawings-only black and white line drawings." However, Applicants did not file any drawings after paying the issue fee, and Applicants believe the alleged 120 days of Applicant delay was in error. Accordingly, Applicants respectfully request that

the erroneous 120 days be removed from the U.S. Patent and Trademark Office's calculation of PTA, and that the patent term be adjusted by **adding 184 days**, as discussed above.

Applicants enclose herewith a copy of the Decision from the Office of Petitions mailed May 13, 2009. Applicants paid the \$200 fee (in accordance with 37 C.F.R. 1.18(e)) with the prior Application and Request filed June 19, 2009. As the instant Supplemental Application and Request merely corrects an error, no additional fee is believed to be due. However, please charge any additional fees to our Deposit Account No. 08-0219, under Order No. 0113476.00122US1.

Respectfully submitted,

Dated: June 22, 2009

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